



UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary of Commerce
for Oceans and Atmosphere
Washington, D.C. 20230

October 10, 2005

VIA FACSIMILE & CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Bruce F. Kiely, Esq.
Counsel for Weaver's Cove Energy, LLC
Baker Botts LLP
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2400

Mr. Grover Fugate, Director
Coastal Resources Management Council
State of Rhode Island and Providence Plantations
4808 Tower Hill Rd., Suite 3
Wakefield, RI 02879-1900

Re: Dismissal of the Consistency Appeal of Weaver's Cove Energy, LLC

Dear Messrs. Kiely and Fugate:

On October 11, 2005, Weaver's Cove Energy, LLC (Weaver) filed with the Secretary of Commerce a notice of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA), 16 U.S.C. § 1456(c)(3)(A). The appeal concerns Weaver's proposed liquefied natural gas terminal in Fall River, Massachusetts, (Project) and its application for a license from the Federal Energy Regulatory Commission (FERC) under the Natural Gas Act, 15 U.S.C. §§ 717- 717w. Weaver appeals what it alleges is an objection by the Rhode Island Coastal Resources Management Council (Rhode Island) to Weaver's CZMA consistency certification for the Project.

The CZMA provides authority to a state with a federally-approved coastal management program to review proposed projects requiring federal licenses or permits if the project will affect the state's coastal zone. A state's review begins on the date it receives the certification and all "necessary data and information." 15 C.F.R. § 930.60. If the state fails to act within six months, the state's concurrence with the certification is conclusively presumed. 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.62(a). Alternatively, a timely objection raised by a state precludes federal agencies from issuing licenses or permits for the project, unless the Secretary of Commerce overrides the objection. 16 U.S.C. § 1456(c)(3)(A).



When a state objects to an applicant's consistency certification, the applicant may request review by the Secretary. *Id.*; see also 15 C.F.R. § 930.125(a) ("To obtain Secretarial review of a State agency *objection*, the appellant shall file a notice of appeal with the Secretary within 30 days of receipt of a State agency *objection*.") (emphasis added).

In this instance, there is no evidence Rhode Island has objected to Weaver's consistency certification. Weaver submitted materials in support of its appeal indicating it has a motion pending before FERC seeking to amend a July 2005 FERC Order. The Order authorizes Weaver to site, construct, and operate its Project once the conditions in the Order are satisfied. Weaver requests FERC amend the Order by eliminating the condition that Weaver provide documentation of Rhode Island's concurrence that the Project is consistent with the state's coastal management program. This motion is predicated upon Weaver's belief the six-month time period for review has passed, and that state concurrence is presumed. Rhode Island filed a brief with FERC opposing the motion.

In response, Weaver filed this appeal with the Secretary of Commerce, contending the arguments in Rhode Island's brief are tantamount to an "objection" within the meaning of the CZMA and its implementing regulations. Rhode Island's brief, however, simply argues that eliminating FERC's condition is inappropriate. In Rhode Island's view, its six-month period for review of the consistency certification has not yet begun because it is still awaiting receipt from Weaver of what it contends is "necessary data and information." Rhode Island has not objected to Weaver's consistency certification.

Absent an objection by Rhode Island, there is no basis for an appeal to the Secretary of Commerce, and thus Weaver's appeal is hereby dismissed for good cause pursuant to 15 C.F.R. § 930.129(a). The filing fee submitted by Weaver is returned to Weaver with its copy of this letter.

Sincerely,



Conrad C. Lautenbacher, Jr.
Vice Admiral, U.S. Navy (Ret.)
Under Secretary of Commerce for
Oceans and Atmosphere

cc: Ms. Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426